IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.25 OF 2007

WITH

CIVIL APPLICATION NO.45 OF 2007

Smt.Sikadevi W/o.Dinesh Singh ...Appellant

Versus

Mithawala Chawl Compound Rahivasi Samiti & Ors. ...Respondents

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Mr.S.K.Chaurasia i/b Mr.Ashok M.Saraogi for Appellant.

Mr.S.A.Sawant for Respondent No.1.

Mr.S.N.Gawade, A.G.P. for Respondent No.2.

Ms.Nisha A.Dabhade i/b Mrs.Geeta Joglekar for Respondent No.3.

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CORAM: A.M.KHANWILKAR, J.

MARCH 13, 2007.

P.C.

1. Heard Counsel for the parties.

2. The argument of the Counsel for the

Appellant is that the Appellant was entitled to grant of ad-interim relief on the basis of the documentary evidence such as ration card, birth certificate of son and the report of survey conducted by the Election Commission in 2001. None of these documents can be of any aid to the Appellant/Plaintiff to establish his stand that the structure in question was protected structure. The Appellant is claiming protection in respect of premises described as patra shed admeasuring 7’ x 10’ situated in campus known as Mithawala Chawl Compound. There is no official document to support the position that the said structure existed prior to 1995. The document such as ration card does not give the description of the suit structure nor the location thereof. The ration card is issued in 2002. The birth certificate relied upon indeed is of December 1995 and the Election Commissioner’s survey report is of December 2001. In the present case, however, there was dispute with regard to the suit property which came up to this Court as back as in 1993. The occupants of the suit property occupying respective tenements/units entered into Consent Terms with the Defendant No.2. Admittedly,

the Appellant is not amongst one of the tenants who are party to such consent terms entered in 1993. There is substance in the argument of the Respondents that the suit structure has been erected by the Plaintiff in subsequent point of time. Admittedly, the Plaintiff is not in a position to place any document on record to indicate that the suit structure namely, patra shed admeasuring 7’ x 10’ has been surveyed by any Competent Authority and recognised as existing prior to 1995. Any other document may not be of any use to the Appellant.

3. Taking overall view of the matter, no fault can be found with the conclusion reached by the Trial Court in refusing to grant ad-interim relief. The fact that the Appellant enjoyed protection for some time on account of the order of this Court, does not mean that the said protection should be continued inspite of the finding recorded hereinbefore. Hence, this Appeal is dismissed.

4. It is made clear that the Notice of Motion will have to be decided by the Trial Court on its

own merits in accordance with law. The Notice of Motion be expeditiously disposed of as High Court Expedited Case.

5. Appeal and the companion Civil Application stand disposed of accordingly.

A.M.KHANWILKAR, J.